Supreme Court, U.S.
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No. 91-1188

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

JAMES ROWLAND, et al., Petitioner,

v.

CALIFORNIA MEN'S COLONY, UNIT II
MEN'S ADV. COUNCIL, Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PRELIMINARY STATEMENT

Respondent's Brief in Opposition to the Petition for Certiorari was filed on February 7, 1992. Petitioner submits this Reply Brief pursuant to Rule 15.6 of the Rules of this Court.

ARGUMENT

THE DECISION TO GRANT ASSOCIATIONS LEAVE TO PROCEED IN FORMA PAUPERIS STATUS UNDER 28 U.S.C. SECTION 1915, BEING A NEW AND NOVEL DECISION, HAS NOT YET REALIZED ITS FULL POTENTIAL FOR MISCHIEF AND THIS COURT SHOULD GRANT CERTIORARI TO PREVENT ITS INEVITABLE DELETERIOUS CONSEQUENCES

Respondent raises two related arguments not addressed in the petition. First, respondent contends that the decision below applies to so few cases that, assuming arguendo the decision is wrong, this Court should exercise its discretion not to hear the case. Opposition Brief at 1; Rules of the Supreme Court, Rule 10.1. The second argument is that despite the fact that there is a conflict between the circuits, the circuits should continue to rule on the issue without this Court's guidance because the considered opinions of the circuits as a whole will enable this Court to "deal with the issue more wisely at a later

date". Opposition Brief at 4; *McCray v. New York*, 461 U.S. 961, 962 (1983). The former argument is ingenuous and the latter is specious.

The first argument does not acknowledge the fact that before the opinion was issued, there was little authority for associations to proceed in forma pauperis, let alone informal prisoner associations. Therefore, there are few decisions on point as to corporations and none on prisoner associations. The Ninth Circuit has expanded the scope of section 1915(a) in a manner which will inevitably increase the number of in propria persona section 1983 cases. We need not rely on empirical verification of the proposition that if a decision increases the number of possible plaintiffs who may proceed in forma pauperis, those plaintiffs will file their cases because there is no economic incentive not to file. Moreover, the obvious advantages given to association plaintiffs by the Ninth Circuit in evading the requirements of class certification, avoiding vexatious litigant determinations, and complicating discovery insure that there will be no reticence on their part to proceed.

The second argument, that there is no immediate need for resolution of the conflict between the Ninth Circuit and the remainder of the circuits, is meritless. Any expansion of the number of possible defendants will exert a hydraulic pressure on our overburdened trial courts, at least in the single circuit which permits association suits in forma pauperis. The number of prisoner civil rights cases increased 1600 percent during the 20-year period ending in 1987, and the number of

these cases which were meritorious was very small, both proportionately and absolutely. *Hernandez v. Denton*, 861 F.2d 1421, 1431 (9th Cir. 1988) (Aldisert, J., dissenting); see also Van Vort, *Note: Controlling and Deterring Frivolous In Forma Pauperis Complaints*, 55 Fordham L. Rev. 1165 (1987); Feldman, *Indigents in the Federal Courts*, 54 Fordham L. Rev. 413 (1985); Turner, *When Prisoners Sue*, 92 Harvard L. Rev. 610 (1979). Under these extreme caseloads, there is no reason to delay examining the merits of the opinion below. Moreover, the unresolved issues concerning indigency determination, standing, and case and controversy (see Petition at 13-20) greatly complicate the determination of these cases within the Ninth Circuit. It is not a "tolerable conflict" to radically increase the number of in forma pauperis cases in one circuit while no other circuit experiences this strain, given the relative simplicity of the legal issues involved.

CONCLUSION

The instant case presents a purely legal question upon uncontroverted facts. The legal question is not complex and all parties and the Ninth Circuit agree as to the relevant law. This Court must rule on this matter before the opinion creates a situation which threatens the quality of justice and hinders the administration of the trial courts within the Ninth Circuit. Petitioner respectfully suggests that a summary disposition of the matters raised in the Petition be issued in petitioner's favor.

DATED: FEB. 1 4 1992

Respectfully submitted,

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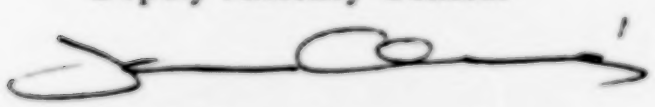

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STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY)
OF SACRAMENTO)

CYNTHIA BAIN, being first duly sworn on oath deposes and states:

I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, Suite 511, Sacramento, California 95814.

On February 14, 1992, I served the attached **REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT** in said cause, by placing three true copies thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

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Cynthia Bain
AFFIANT

Subscribed and sworn to before
me this 14th day of February, 1992.

Rosalind Zuber
Notary Public in and for said
County and State